

Extrajudicial Killings

Al-Haq's Background Brief on Israel's Extrajudicial Killings in the OPT

Israel's extrajudicial killings have become symbolic of its disregard for international law and the culture of impunity that surrounds these breaches. Extrajudicial killings are nothing new in Israel's nearly forty-year-old occupation of the West Bank, including East Jerusalem, and the Gaza Strip, together constituting the Occupied Palestinian Territories (OPT). This background brief focuses on Israeli extrajudicial killings throughout the OPT between January and October 2006. Such killings continue today, as seen in the recent attacks on Gaza during the "Autumn Clouds" operation, creating an environment of constant fear that feeds into the seemingly never-ending cycle of violence.

Israel's Extrajudicial Killings in 2006

Between January and October 2006, Al-Haq has documented numerous deaths attributable to Israeli extrajudicial killings. Killings were carried out by air strikes, by Israeli special squads and during raids by Israeli occupying forces. These killings have taken various forms. This brief will focus on two of the most disturbing forms - summary executions and targeted assassinations.

Summary Executions

In the case of summary executions, persons who are already under the control of Israeli agents are wilfully killed instead of being arrested or provided with medical treatment. In 2006 alone, Al-Haq has documented eight cases of summary executions in the West Bank in which Israeli soldiers or special agents typically shot at close range, and immediately killed, wounded Palestinians who lay on the ground and did not constitute any threat. For examples of such summary executions, see Al-Haq affidavits 2985/2006, 3012/2006, 3115/2006 and 3175/2006.¹

"The soldiers spotted Kamel and one of them moved towards him and shot him at point blank range. The soldier then fired two bullets at Kamel's body. Afterwards, I heard him say over his wireless in Hebrew, which I speak fluently, "I found an armed man and he is injured". A few minutes later I saw the soldier, who was wearing a mask, empty the bullets from his gun into my brother's body. I began screaming, "why did you do this, my brother is not wanted"."

Extract from Al-Haq Affidavit No. 3175/2006

Given by Zakariya Kayed Lubhani (resident of Qabatiya, Jenin Governate, West Bank)

¹ These can be downloaded from Al-Haq's website at <http://asp.alhaq.org/zalhaq/site/eDocs/affidavits.htm>.

Targeted Assassinations

In the case of targeted assassinations, wanted persons are killed by surprise attack as the result of a politically motivated policy decision. Israel has an official policy of carrying out targeted assassinations. According to Al-Haq's and Al Mezan's documentation, an estimated 57 Palestinians were killed in targeted assassinations throughout the OPT during the reporting period. These assassinations bring the total deaths attributed to targeted assassinations to nearly 300 since the outbreak of the second *intifada* in September 2000.

"As he was putting the phone to his ear, I heard a sound, like 'tik tik'. I was sitting to the left of my brother, and less than half a metre from him. All of a sudden my brother exclaimed "Akh", expressing pain. I asked him what had happened, and he replied "I was hit". I looked at him, examining his body, and saw blood pouring from his face and chest. I then looked to my right and saw 'Amid al-Masri, who was merely metres away from us, bleeding and still sitting facing the north. I was shocked at what had happened and ran away, as did all our friends who were present there. I ran toward our home which was only 100 metres away, shouting that Hani had been assassinated."

Extract from Al-Haq Affidavit No. 3110/2006

Given by Hilal Muhammad 'Weijan, (resident of al-Habli Quarter, Nablus, Nablus Governorate, West Bank).

In addition, targeted assassinations have repeatedly resulted in the death and injury of civilian bystanders who happen to be in the vicinity at the moment of the attack. For instance, on 6 March 2006, an Israeli aircraft carried out a missile strike against two wanted individuals driving in a car in a residential neighbourhood at a busy time of the day. The strike killed three nearby children and wounded approximately 12 people, including six children.²

The policy of targeted assassinations has become an integral part of Israeli military culture. In July 2001, the Israeli security cabinet gave the military permission to kill anyone on Israel's "wanted" list, not just individuals on their way to carrying out attacks against Israeli targets. After a brief suspension in 2005, Israel has resumed its policy of targeted assassinations and now carries out such extrajudicial killings with great regularity.

Impunity

Investigation of criminal acts perpetrated by members of the Israeli occupying forces against Palestinians, particularly with regard to the use of lethal force, is largely insufficient or non-existent. The Israeli military refuses to investigate killings of Palestinians that take place in a context of armed conflict. Furthermore, by construing the notion of "armed conflict" very broadly, Israeli authorities have only investigated approximately two percent of the more than three thousand such cases since the outbreak of the second *intifada* on 29 September 2000. There are cases in which the

² See <http://asp.alhaq.org/zalhaq/site/templates/viewArticle.aspx?fname=../ePublications/240.htm>.

Judge Advocate General's office has refused to investigate cases involving a clear breach of IHL, where the event had just taken place and witnesses were available. Often, investigations are only opened as a result of strong outside pressure, as reflected in the high ratio of investigations in cases of lethal use of force against foreigners.

When investigations are opened, they are not pursued in a speedy, effective, independent and impartial manner. The practical difficulties of investigating inside the OPT are not sufficient to explain all their many shortcomings, such as the Israeli military gathering evidence from sources within the Israeli military without checking the evidence against the victims' version of events. In general, the Israeli military does not proactively contact witnesses from outside of the ranks of the Israeli military. In short, Israel provides impunity for those of its agents responsible for extrajudicial killings of Palestinians.³

Extrajudicial Killings and International Law

Israel is obligated under international human rights law to protect the fundamental right to life of all those within its *de facto* jurisdiction. Although Israeli authorities claim that they are not responsible for the application of international human rights law in the OPT, this point has been consistently rejected by the international community, most notably in the International Court of Justice's Advisory Opinion on the Wall of 9 July 2004. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Under Article 4 of ICCPR, the right to life cannot be derogated from even "[i]n time of public emergency which threatens the life of the nation."

If Israel has credible evidence that certain individuals are involved in criminal activity, it may arrest, charge and submit them to a fair trial. Extrajudicial execution of wanted individuals bypasses the essential safeguards of fair trial. As such, Israeli authorities are in breach of the right to a fair trial as guaranteed in Article 14 of the ICCPR.

As an Occupying Power, Israel is furthermore legally obligated to respect international humanitarian law (IHL), which prohibits wilful killings of protected persons. Wilful killings are considered a grave breach of the Fourth Geneva Convention under Article 147. In addition, the Israeli policy of extrajudicial killings fails, by targeting civilians, to respect the fundamental principle of distinction between combatants and civilians. Moreover, it regularly fails to respect the principle of proportionality by employing excessive lethal means leading to the death or injury of bystanders. Finally, targeted assassinations, which are carried out in non-combat situations, cannot be justified by military necessity.

International humanitarian law also guarantees fair trial. Common Article 3(1) of the four Geneva Conventions of 1949 prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." The minimum standard contained in this prohibition is generally recognised as applying to any form of armed conflict.

³ For a general study on this, see "Promoting Impunity – The Israeli Military's Failure to Investigate Wrongdoing", *Human Rights Watch*, vol. 17, No. 7(E) (June 2005).

Conclusion

Despite the clear illegality of Israel's extrajudicial killings, Israeli authorities have provided impunity for the perpetrators of such acts and no means of redress for its victims. This follows from the official Israeli endorsement of this policy. On 7 March 2006, former Israeli Defence Minister Shaul Mofaz, stated that the practice of targeted assassinations was "correct and will continue," and that no one was immune, not even the Palestinian Prime Minister.⁴ In the words of then acting Israeli Prime Minister Ehud Olmert in early March 2006, "There are no restraints on security forces to use any means necessary to stop terror attacks."⁵

Israel's continued breaches of international human rights and humanitarian law, and the impunity which it enjoys in this regard, are creating the perception among Palestinians that international law is incapable of providing them with protection. Therefore, Al-Haq appeals to the High Commissioner for Human Rights to:

1. Call on the Government of Israel to respect international law, cease its policy of targeted assassinations, and bring to justice the perpetrators of any extrajudicial killings.
2. Call on UN member states to pressure Israel to respect international law, cease its policy of targeted assassinations, and bring to justice the perpetrators of any extrajudicial killings.
3. Call on the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to conduct a fact-finding mission to the OPT.

⁴ Amos Harel and Arnon Regular, "IAF probe: Civilians spotted too late to divert missiles in Gaza strike", *Ha'aretz*, 7 March 2006.

⁵ "Israel's Olmert Will Use 'Iron Fist' Against Terror Attacks", *Associated Press*, 2 March 2006.